United Nations A/HRC/38/48/Add.2

General Assembly

Distr.: General
9 May 2018

Original: English

Human Rights Council
Thirty-eighth session
18 June–6 July 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Peru

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Peru from 10 to 19 July 2017.

GE.18-07445(E)
1807445

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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Peru*

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* Circulated in the language of submission and Spanish only.

I. Introduction

1. Pursuant to Human Rights Council resolutions 17/4, 26/22 and 35/7, the Working Group on the issue of human rights and transnational corporations and other business enterprises, represented by two of its members, Michael Addo and Dante Pesce, visited Peru from 10 to 19 July 2017, at the invitation of the Government. The purpose of the visit was to assess the efforts that have been and are being made to prevent and address the adverse impact on human rights of business-related activities, in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

2. During their visit, the experts met with communities and representatives of indigenous peoples in Lima and in the Regions of Cajamarca, Loreto, Apurimac and Cusco. They met with government officials from the Office of the President of the Council of Ministers (including the Office of the Deputy Minister of Territorial Governance, the Office of the Secretary for Social Management and Dialogue, the Office of the Undersecretary for Dialogue and Sustainability and the Office of the Undersecretary for Prevention), the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Justice and Human Rights, the Ministry for Women and Vulnerable Groups, the Ministry of Development and Social Inclusion, the Ministry of Culture, including its General Directorates of Intercultural Citizenship and of the Rights of Indigenous Peoples, the Ministry of the Environment, the Ministry of Energy and Mining, the Ministry of Labour and the Promotion of Employment and the Ministry of the Economy and Finance. They also met with representatives of the regional governments of Loreto, Cajamarca, Cusco and Apurimac, members of Congress (the commissions dealing with indigenous peoples and the environment and with energy and mining) and representatives of the Supreme Court and the Office of the Ombudsman.

3. In addition, the experts met with representatives of civil society organizations, trade unions, academia, the United Nations system, the diplomatic community, the Working Group on the Voluntary Principles on Security and Human Rights, business associations, including the National Confederation of Private Business Associations, which coordinates the Peruvian United Nations Global Compact Network, and the National Mining, Oil and Energy Society. The Working Group also met with representatives of the Peruvian Stock Exchange and individual business enterprises, both State-owned and private, including the National Fund for the Financing of the Public Sector Companies, Perupetro S.A., Petróleos del Perú (Petroperú S.A.) and the mining companies Yanacocha and Las Bambas.

4. The Working Group is grateful to the Government for the support it provided, its facilitation of the visit and its willingness to engage in a discussion on current initiatives and challenges faced in aligning policies and practices with the Guiding Principles. It is also grateful for the support provided by organizations, communities and representatives of business enterprises and wishes to thank them for their openness and willingness to engage in dialogue with the Working Group.

II. General context

5. Peru has been one of Latin America's fastest-growing economies for the past 10 years. Economic growth has led to growth in employment and income and, despite significant disparities from region to region and between rural and urban areas, a reduction of income poverty from 42.4 per cent in 2006 to 20.7 per cent in 2016. According to official statistics for 2016, the incidence of poverty in rural areas (43.8 per cent) was three times higher than in urban areas (13.9 per cent), while the incidence of extreme poverty — considered to have been largely eradicated in the richest regions and departments, such as Arequipa, Ica and Lima — was estimated to be between 16.6 and 23.3 per cent in

Cajamarca.[1] It is thus clear that to achieve the objectives of inclusive, sustainable development, much is still to be done.

6. Over the past decade, successive Governments have promoted foreign direct investment as a main policy objective, and the number of concessions granted for mining and drilling operations has exploded. The mining sector accounts for the largest share of foreign direct investment, at around 24 per cent.[2]

7. During its visit, the Working Group received information from civil society actors and local communities on alleged adverse business-related human rights abuses, including abuses connected with the environmental and social impact of large-scale projects, violations of labour rights exacerbated by the pervasiveness of informal work and the large number of business-related social conflicts.

8. The Working Group observed a growing awareness among government and business officials that the promotion of investment must ensure respect for human rights and encourage sustainable development. It learned about efforts to mitigate the negative impact of business-related activities and improve the consultation and dialogue processes engaged in by the Government, businesses and local communities in a bid to address the problem of social conflicts.

9. The aspiration of Peru to become a member of the Organization for Economic Cooperation and Development (OECD) requires the adoption of new policies and regulatory frameworks, including in areas such as investment, the environment, labour relations and public procurement, and compliance with the OECD Guidelines for Multinational Enterprises, in particular the chapter on human rights, which is aligned with the Guiding Principles. Consequently, the effective implementation of the Guiding Principles is also important to the country's pursuit of OECD membership.

III. Legislative and policy framework

10. Peru is a representative democratic republic divided into 25 regions. The executive branch is headed by the President, who presides over the Cabinet (Council of Ministers). The legislative branch consists of a 130-member unicameral congress.

11. The Peruvian Constitution recognizes a comprehensive list of human rights that must be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements that have been ratified by Peru.

12. Peru is a party to all nine core international human rights treaties and has ratified or acceded to seven of the nine optional protocols.[3] In 2007, Peru signed the United Nations Declaration on the Rights of Indigenous Peoples. The country reports regularly to the human rights treaty bodies and has extended a standing invitation to the special procedure mandate holders of the Human Rights Council since 2002.

13. Peru has ratified the eight fundamental conventions of the International Labour Organization (ILO), which cover freedom of association, forced labour, discrimination and child labour. It has not ratified any of the four ILO governance conventions, which address employment policy, tripartite consultation and labour inspection. It has ratified ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

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[1] See www.inei.gob.pe/media/cifras_de_pobreza/pobreza2016.pdf.

[2] According to official figures, 86 per cent of foreign direct investment is concentrated in the mining (24 per cent), financial (18 per cent), communications (18 per cent), industrial (12 per cent) and energy (14 per cent) sectors. See www.investinperu.pe/modulos/JER/PlantillaStandard.aspx?are=1&prf=0&jer=6037&sec=17.

[3] Peru has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights or the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

14. Peru is a party to the main human rights instruments of the inter-American system and recognizes the competence of the Inter-American Court of Human Rights.

15. The Working Group recognizes the efforts made by the State in recent years to strengthen its legal framework for the promotion and protection of human rights, in particular the rights of persons with disabilities, indigenous peoples and women, to address child labour and to penalize forced labour.

IV. Awareness of business and human rights

16. The Working Group welcomes the political willingness of the Government to implement the Guiding Principles and the inclusion of a section on business and human rights in the Human Rights Plan 2018–2021, as part of which Peru undertakes to conduct a participatory and inclusive process for the development in 2019 of a specific national action plan on business and human rights.[4] The Working Group has encouraged all States to develop such action plans,[5] and it hopes that the present report will inform this important process in Peru.

17. The Working Group observed that the connections between different policy areas and the business and human rights agenda were generally not sufficiently understood or explored, underlining the need for the policies of government ministries and departments to be more coherent, in particular the policies of those leading on human rights issues and those shaping business practices. The process of developing a national action plan should help make policy more coherent, not least by ensuring that initiatives in the areas of business and human rights, competitiveness and sustainable investment are linked.

18. The Working Group heard from business enterprises and associations that corporate human rights due diligence was considered part of normal good business practice. However, the Working Group heard less about how actual human rights risks and cases of abuse had been identified, in particular in the context of recurrent social conflict related to large-scale business operations. Business associations pointed out that despite efforts made by their members, business activities in the large informal economy, which were associated with adverse effects on human rights, posed major problems.

19. While there seemed to be a growing awareness of the responsibility of businesses to respect human rights, the Working Group also found that much more needed to be done to encourage and incentivize businesses to exercise human rights due diligence. Human rights due diligence, as the Guiding Principles indicate, should be ongoing, carried out prior to major decisions or changes in an operation and involve meaningful consultation with potentially affected groups and other relevant stakeholders. How impacts are identified and addressed should be communicated. Otherwise, policy commitments will not translate into effective action. Business associations can play a critical role in promoting human rights due diligence by their members.

20. The Working Group learned from the National Fund for the Financing of the Public Sector Companies, the entity responsible for regulating and coordinating State corporate activity, that it was committed to implementing the Guiding Principles. The Working Group welcomes this commitment, which, however, still needs to be translated into concrete guidance and incentives for State-owned enterprises to exercise human rights due diligence. The Government should ensure that State-owned or other government-controlled enterprises lead by example in implementing the Guiding Principles, in line with the recommendations made by the Working Group.[6]

[4] Supreme Decree No. 002-2018-JUS (1 February 2018).

[5] See www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf.

[6] A/HRC/32/45.

V. Issues related to large-scale development projects

A. General observations

21. Recurrent themes in reports of alleged business-related human rights abuses included abuses connected to social conflict in the context of large-scale projects, inadequate environmental, social and human rights impact assessments and labour-related abuses linked to the country's large informal sector.

Social conflicts

22. According to the Office of the Ombudsman, an average of 200 social conflicts a year were recorded during the period 2014–2017, of which a majority were related to business operations in the mining (45 per cent), hydrocarbon (10 per cent), energy (5 per cent) and agribusiness (2 per cent) sectors. During the same period, these social conflicts resulted in 49 deaths (43 civilians and 6 members of the security forces) and injuries to approximately 1,410 people (775 civilians and 635 members of the security forces).[7] Although the number of deaths and injuries has fallen since 2016, the Working Group deplores the large number of people killed or injured in social conflicts. In the period 2016–2017, social conflicts resulted in the deaths of 12 persons and injuries to 287; in the period 2014–2015, such conflicts led to the deaths of 37 persons and to injuries to 1,123.

23. The main causes of social conflict linked to large-scale business operations were, according to information received by the Working Group, concerns about adverse effects on health and the environment, inadequate transparency and access to information and the limited participation of interested parties in decision-making processes. In addition, companies underscored the problem of operations being located in regions where the State has little presence and where inequality and poverty prevail, a factor that increases community expectations of the benefits of a given project. Local communities and companies were sometimes left to address local grievances on their own, without government support, and negotiations were frequently held in locations far from where the conflicts actually occurred.

24. The Working Group would like to stress that the meaningful participation of all persons who might be affected by the outcome of the process should be encouraged in every decision-making process. To that end, people should have transparent and easy access to all pertinent information relating to business activities, the impact of those activities and the sharing of benefits. The consultations that are mandatory for projects affecting indigenous peoples would also be relevant for non-indigenous peoples and communities, not least to identify and mitigate the adverse impact of those projects on human rights, in line with the Guiding Principles and the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, developed by OECD.

25. The Working Group heard that agreements reached by affected communities with a company and the State were usually not honoured.[8] It was pleased to learn that the Office of the Deputy Minister of Territorial Governance had established a database of 2,638 existing commitments made by the State and other parties since 2010 in the context of dialogue forums; actions to honour 1,565 of the commitments are pending. The Working Group also noted that the Standing Multisectoral Commission on the Application of the Right to Consultation had formally begun monitoring the implementation of agreements between the State and indigenous peoples reached through processes of prior consultation carried out according to Act No. 29785, the Prior Consultation Act.

[7] Peru, Office of the Ombudsman, Monthly reports on social conflicts, Nos. 119–166 (January 2014–December 2017).

[8] World Bank, "La consulta previa en el Perú. Desafíos y aprendizajes" (2016).

26. The Working Group was informed of social conflicts stemming from land disputes and allegations that land had been acquired by businesses without due regard for the land rights of indigenous and non-indigenous communities.

27. The Working Group was pleased to hear that a new approach to social dialogue and consultation was being taken to provide more venues for dialogue, promote the participation of interested parties and formalize land titles. The establishment of the new Office of the Deputy Minister of Territorial Governance in March 2017 and of the Social Progress Fund for Education, Infrastructure and Health Care in areas where the extractive industry operates appeared to be steps in the right direction.[9]

Environmental, social and human rights impact assessments

28. The Working Group learned about repeated public health emergencies declared in relation to industrial pollution. In this regard, the Working Group acknowledges steps taken by the Government to strengthen environmental institutions. However, more needs to be done to assess environmental and social effects, including the impact on human rights, in the processes conducted to approve, assess and monitor business projects. More should also be done to secure the effective participation of affected communities in these processes.

29. The Working Group was informed that environmental studies in relation to large-scale projects occur at two different stages: before granting exploration and exploitation concessions and, to verify that operations are in line with environmental rules, once a project has been launched. First, an environmental impact assessment is conducted by an independent contractor and then reviewed by the Ministry of the Environment's National Environmental Certification Service for Sustainable Investments. The assessment, which gives consideration to environmental and social impacts, does not look into how a proposed project will affect human rights.[10] On the basis of the impact assessment, the Ministry of Energy and Mining decides whether to grant a licence for exploration or exploitation.[11] The mandate of the Environmental Assessment and Enforcement Agency, also part of the Ministry of the Environment, is to assess environmental damage or the risk thereof and to monitor compliance with the obligations contained in impact assessments. The Agency can order a company to take remedial measures or take punitive action against it.

30. The Working Group welcomes the Certification Service's commitment to further emphasizing the social aspects of impact assessments. However, the incorporation of social and human rights criteria should be formalized.

31. During its visit to Apurimac Department, the Working Group learned that communities affected by the Las Bambas Mining Project were not consulted when amendments were made to the impact assessment of the Project. The amendments were linked to a change in the means whereby copper concentrates were to be transported. Instead of being transferred by slurry pipeline, they would be hauled overland. As a result, 300 trucks a day, loaded with copper concentrates and chemicals, covered a distance of nearly 500 km each over unpaved roads through remote rural communities, shaking the land and buildings, raising dust and endangering livestock. The failure to consult the communities affected by the increased traffic contributed to the escalation of social unrest in 2015, during which four people were killed and others were injured.[12] The Working Group had a constructive dialogue with managers at the mine and was given information about the company's commitment to engaging in dialogue with communities about their grievances in a safe and peaceful manner.

[9] See www.state.gov/e/eb/rls/othr/ics/2017/wha/270090.htm.

[10] See www.senace.gob.pe/certificacion/ventanilla-unica/.

[11] Act No. 30705 (20 December 2017).

[12] Peru, "Fiscalización ambiental: construyendo confianza y facilitando la inversión" (Environmental Assessment and Enforcement Agency), pp. 43–44. Available from www.oefa.gob.pe/en/publicaciones/fiscalizacion-ambiental-construyendo-confianza-y-facilitando-la-inversion.

32. The Working Group was also informed of the adoption of a number of legislative decrees from 2013 to 2015 that, seeking to boost investment, had weakened environmental regulations and oversight.[13] Act No. 30230 of 2014 prevented the Environmental Assessment and Enforcement Agency from imposing direct fines on polluting companies for a period of three years, except in the most serious cases. Moreover, the period for completing impact assessments was shortened, negatively affecting the feasibility of more inclusive and participatory environmental assessments. The Working Group welcomes the congressional decision of April 2017 to restore the Agency's power to impose fines.

33. The Working Group also learned about other regulations that would weaken environmental protections, such as a draft decree that would lower air quality standards and increase the limits on exposure to sulfur dioxide by a factor of 12.[14]

B. Cases concerning specific sectors

34. The Working Group could not analyse all the reports of business-related human rights abuse it received, but it looked at a number of emblematic ones in specific business sectors.

Mining sector

35. The mining sector has been growing in Peru, and the country is currently the world's third largest producer of copper and silver and the sixth largest producer of gold.[15] The Working Group was informed of numerous allegations that mining operations had had adverse effects on human rights, including damage to the environment that affected human health. Mining operations have also been associated with land disputes and concerns about land acquisitions through coercion or deception.

36. One case that has attracted international attention is the struggle of a farmer, Máxima Acuña de Chaupe, and her family in Celendín, Cajamarca, to remain on land that was being claimed by the mining company Minera Yanacocha for a new mining operation. Ms. Acuña de Chaupe and her family informed the Working Group of the intimidation, threats and harassment they had been repeatedly subjected to. As a result of those acts, the Inter-American Commission on Human Rights had requested the adoption of precautionary measures for members of the family and 46 other local community leaders involved in protests against the mining project.[16]

37. Minera Yanacocha, a joint venture between Newmont Mining (51.35 per cent), Minas Buenaventura (43.65 per cent) and the International Finance Corporation (5 per cent), initiated several legal cases, both civil and criminal, against Ms. Acuña de Chaupe and her family. On 3 May 2017, after a five-year trial, the Supreme Court ruled in the criminal case that the family had not illegally occupied the land bought in 1994, that it had not committed any crime, as had been alleged by the company, and that the issue of title to the property should be settled through civil proceedings.

38. The Working Group was encouraged by the decision of Newmont Mining Corporation, as majority shareholder of Minera Yanacocha, to request an independent fact-finding mission to examine the dispute. The mission, which based its analysis on the Guiding Principles, concluded, inter alia, that the company's "failure to conduct adequate human rights due diligence is one factor that has contributed to a situation where the human rights of the family have been at risk from the outset of the land dispute and have continued to be put at risk as the conflict has unfolded" and that "finding a pathway towards a

[13] Supreme Decree No. 054-2013-PCM, Supreme Decree No. 060-2013-PCM, Act No. 30025, Act No. 30230, Supreme Decree No. 001-2015-EN and Act No. 30327.

[14] Ministerial Decision No. 094-2017-MINAM.

[15] See https://assets.kpmg.com/content/dam/kpmg/pdf/2016/03/peru-mining-country-guide.pdf.

[16] Inter-American Commission on Human Rights, resolution 9/2014, precautionary measure No. 452-11 (5 May 2014).

resolution has been delayed by a strategy that prioritized litigation over dialogue".[17] The Working Group considered the steps taken to commission the study and release it publicly as positive and encouraged the company to bring its policies and practices into line with the mission's recommendations.

39. The Working Group learned that the adverse health and environmental impact of mining operations had led to the declaration of several environmental and public health emergencies since 2012. In June 2017, for example, the Ministry of Health declared a 90-day public health emergency in the districts of Chaupimarca and Simón Bolívar in Pasco Department in response to contamination (lead and other heavy metals) from mining operations.[18] Concerns about young children, who are particularly vulnerable to the toxic effects of lead, which can cause irreparable cognitive impairment, are particularly great.

40. The Office of the Ombudsman of Cusco reported in 2015 that blood concentrations of most heavy metals exceeded permissible limits in the Province of Cusco.[19] The Working Group was informed of concerns about inaction in this regard. A Cusco regional health plan meant to address the problem of heavy metals in Espinar Province, for example, had not been implemented. Moreover, a study to assess links between water contamination and mining operations has been ongoing since 2015.

41. The Working Group was informed that in La Oroya, in Junín Region, heavy metals had been found in the blood of the people living near the Doe Run metallurgical complex. As a result, in 2007 and 2016 the Inter-American Commission on Human Rights had sought precautionary measures for 79 residents, requesting the Government to provide specialized medical diagnoses and medical treatment to those who were at risk of irreparable damage to their personal integrity or life (the requests were not fully complied with, however).[20] The mining company Doe Run has been sanctioned 20 times by the Environmental Assessment and Enforcement Agency and fined $8 million.

42. The Working Group learned that environmental damage caused by mining is also pronounced in small-scale illegal operations, where there is no oversight of compliance with environmental, labour and health safeguards. Workers allegedly endure extreme health and safety conditions, and forced labour, child labour and other forms of exploitation, including sexual and labour trafficking, are said to be widespread.[21]

Oil and gas sector

43. The Working Group received several reports concerning adverse environmental and health impacts related to the oil and gas sector, including oil spills. These reports are consistent with sanctions imposed by the Environmental Assessment and Enforcement Agency on oil and gas companies and repeated declarations of environmental emergencies. The Working Group met with affected communities whose members voiced concerns about adverse impacts on their health and their ability to continue relying on fisheries and farming for their livelihoods.

44. The Working Group was informed that in the past 40 years, there had been approximately 60 spills, 13 of them in 2016 alone, from the Norperuano pipeline, operated by the State-owned company Petroperú. According to Petroperú, many of the spills had been deliberate, caused ostensibly by persons seeking to gain employment in subsequent clean-up operations. Other observers, however, including regional officials, were of the view that most of the spills were caused by inadequate maintenance. Petroperú had been

[17] See www.resolv.org/site-ytflm/files/2015/08/YTFM-report_280916-Final.pdf.

[18] Supreme Decree No. 020-2017-SA.

[19] Letter No. 0330-2015-DP/OD-CUSCO/PA.

[20] Inter-American Commission on Human Rights, resolution 29/16, precautionary measure No. 271-5.

[21] Teodoro Sanz, "Caracterización de las condiciones de trabajo forzoso en la minería de oro en Madre de Dios y una aproximación a los factores de riesgo" (ILO, 2015).

sanctioned 57 times for the damage to the environment and human health caused by its operations, including oil spills.[22]

45. The Working Group also learned about the adverse impact of the activities of the company Pluspetrol in the Amazonian rainforest, including in block 192 (previously known as 1AB) and block 8 in the Province of Iquitos. On acquiring licences for those blocks, Pluspetrol had accepted legal responsibility for any environmental damage.[23] In August 2015, however, the company reportedly left block 192 without cleaning up the affected sites or remediating the damage caused by spills attributed to its operations. As a result, Peru declared several states of environmental emergency, and the Environmental Assessment and Enforcement Agency issued 15 sanctioning resolutions for breaches of environmental regulations.

46. The Working Group underscores the State's obligation to hold companies accountable for the adverse impact on human rights caused by their activities and uphold the right of indigenous communities to give free, prior and informed consent to the granting of oil and gas concessions by which they are affected. In this regard, the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes have called on Peru to suspend negotiations on relicensing block 192 "until the right to free, prior and informed consent is guaranteed, and all environmental damage has been remedied".[24]

47. The Working Group observed considerable social conflict over operations on the lands of indigenous peoples. There are no precise official figures for the percentage of the blocks granted in concession that is indigenous land, whether titled or held by custom. According to the Government, however, approximately 50 per cent of licensed areas for oil and gas operations in the Amazon region of Peru currently being explored or exploited overlap with the titled land of indigenous communities, including reserves set up for peoples living in a situation of isolation or initial contact.[25]

Large-scale agriculture

48. Between 2010 and 2014, according to a 2017 study by the Office of the Ombudsman, more than 30,000 hectares of forest in the Amazon basin was cleared to make way for oil palm and cacao plantations in areas inhabited mostly by indigenous peoples.[26] Some plantations had reportedly been developed without the required licences. Concerns about illegal deforestation led the Round-Table on Sustainable Palm Oil to declare publicly that Plantaciones de Pucallpa, part of the Melka Group, which cleared more than 5,000 hectares of land, including primary forest, was in violation of Round-Table rules. As a consequence, the Melka Group was delisted from the London Stock Exchange.[27]

49. The Working Group was informed that the Government did not have exact data on the extent of those plantations and that there was a need for further studies of soil conditions and capacity at the national and local levels. The Working Group also learned that a national plan on sustainable oil palm development had been proposed and welcomed the Ministry of Agriculture's efforts to hold prior consultations with the indigenous communities identified as potentially affected. The Working Group encourages the

[22] Directorate Decision No. 878-2016-OEFA.

[23] See Environmental Assessment and Enforcement Agency, report No. 411-214-oefa / DH-HID, and Petroperú, legal report LEGL -0747-2014.

[24] Press statements of 15 December 2014 and 13 July 2017. See, for example, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21871&LangID=E.

[25] See www.ohchr.org/Documents/Issues/IPeoples/SR/CamiseaProjet.pdf.

[26] Peru, Office of the Ombudsman, "Deforestación por cultivos agroindustriales de palma aceitera y cacao. Entre la ilegalidad y la ineficacia del Estado", report No. 001-2017-DP/AMASPPI.MA (June 2017).

[27] See www.rspo.org/members/complaints/status-of-complaints/view/88.

Ministry to open the consultations to all potentially affected communities, identified in a participative manner, and review the proposed plan accordingly.[28]

50. The Working Group was informed of the steps taken by the State to protect forests and limit land-use changes.[29] At the same time, the Working Group's interlocutors expressed concern about the insufficient implementation of existing regulations. For example, despite regulations providing that agricultural activities are not environmentally viable in protected areas, licences for extensive plantations have still been approved in such areas in the Amazon basin. The Working Group learned that environmental impact assessments of agribusiness projects were approved without prior soil studies in the relevant areas.

51. Land-grabbing reportedly occurred in the context of land acquisition for plantations. According to the information received by the Working Group, it took the following forms: (a) acquiring public lands for oil palm or cacao projects; (b) granting certificates of possession, which, under former legislation, made it possible to acquire the title after a certain period of use and possession, and then transferring the title to companies promoting such projects; and (c) buying private land from locals through intermediaries and the use of coercion and deception.[30]

VI. Specific issues

A. Labour rights

52. The Working Group was encouraged to learn about legislative and regulatory developments aimed at promoting access to the labour market for people with disabilities, combating forced labour and child labour and advancing gender equality at work.[31] The results, according to information received by the Working Group, had so far been limited by the failure to implement existing legal and policy frameworks effectively and the prevalence of informality in the labour market.

Freedom of association and collective bargaining

53. The Working Group was informed that only 6 per cent of formal workers in the private sector and 13 per cent in the public sector were unionized. A number of civil society and union representatives attributed this situation to the routine dismissals of and attacks and judicial complaints against workers who joined trade unions.[32] Collective bargaining and freedom of association were reportedly undermined by the widespread use of short-term contracts, as noted in a number of complaints submitted by Peruvian workers or their representatives to ILO.[33]

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[28] Ministerial Decision No. 281-2016-MINAGRI (3 May 2016).

[29] Forestry and Wildlife Act No. 29763, the Regulations for Forest Management and Supreme Decree No. 018-2015-MINAGRI.

[30] Juan Luis Dammert Bello, "Acaparamiento de tierras en la Amazonia peruana. El caso de Tamshiyacu" (Wildlife Conservation Society, 2017).

[31] These developments included the adoption of acts on persons with disabilities and on equal opportunities for men and women, the criminalization of forced labour, the implementation of a plan to combat forced labour, the issuance of a decree that established a national commission to combat forced labour and the development of a national strategy for the prevention and eradication of child labour. The Standing Multisectoral Committee to Combat Trafficking in Persons and the Illicit Trafficking of Migrants was established by Decree No. 001-2016-IN (9 February 2016).

[32] See www.ilo.org/dyn/normlex/es/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3523561.

[33] See, for example, case No. 3069 (Peru).

Labour informality

54. Government officials informed the Working Group that informality affected 72 per cent of workers in Peru, in particular in small companies and micro-enterprises.[34] The Working Group is concerned that the prevalence of informal employment undermines the effective protection of labour rights, including in terms of social protection, minimum wage, working conditions, security and health. The Working Group was also informed that cases of human trafficking and modern slavery, as well as violations of environmental and social norms, were found in the informal sector, in particular in illegal mining and logging.

55. The Working Group was encouraged to learn that the Government had made efforts to curb informality, including by establishing the Social Protection Commission.[35]

Child labour

56. According to the latest survey on child labour, 26.1 per cent of children in Peru aged between 5 and 17 worked, and 16.8 per cent (1.25 million) were involved in hazardous work, as defined by ILO, in particular in agriculture, fishing and mining (together, these sectors accounted for 60 per cent of all child labour and 58.4 per cent of hazardous child labour).[36] The Working Group was pleased to learn that policies and legislation have been adopted to combat child labour and hazardous or abusive work. However, it encourages the Government to enforce these measures, not least by ensuring that the necessary budget and institutional capacity are provided and that employers' practices, including in the illegal mining sector, are monitored.[37] The Working Group also endorses raising the legal minimum age for admission to employment to 15, the age of the end of compulsory education, as recommended by the Committee on the Rights of the Child.[38]

Persons with disabilities

57. The Working Group was encouraged to see that several innovative measures have been taken with a view to improving the employment situation of persons with disabilities and addressing the workplace discrimination they suffer.[39] Such persons still face discrimination in accessing employment, however. Only 15 per cent of them are employed, mainly because they lack the educational backgrounds sought by employers.[40]

Gender discrimination

58. The Working Group noted with concern that, despite some improvements, women face discrimination, in access to the labour market, wage discrimination and discriminatory conditions of work, including harassment.[41] The Working Group therefore welcomes recent

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[34] See www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-lima/documents/genericdocument/wcms_550373.pdf and www.inei.gob.pe/media/MenuRecursivo/noticias/nota-de-prensa-n205-2016-inei.pdf.

[35] Ministerial Decision No. 017-2017-ef/10.

[36] See www.ilo.org/ipecinfo/product/download.do?type=document&id=28857.

[37] E/C.12/PER/CO/2-4, para. 7.

[38] CRC/C/PER/CO/4-5, para. 66.

[39] Under Act No. 27050, the General Act on Persons with Disabilities, there are quotas for the employment of persons with disabilities. Such persons should account for 3 per cent of the payroll of private sector employers with more than 50 employees and 5 per cent of that of public sector institutions. The Act also provides for tax deductions for employers whose workforces are composed of at least 30 per cent persons with disabilities. See www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3241899:NO.

[40] See https://disiswork.com/blog/situacion-laboral-de-personas-con-discapacidad-en-peru/ and www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3241899:NO.

[41] According to national statistics, women in Peru on average earned 28.6 per cent less than men in 2015, see www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1388/Libro.pdf.

initiatives to address these problems, such as the dissemination of a handbook on preventing and sanctioning sexual harassment in the workplace.[42]

59. Civil society organizations reported to the Working Group that the Government has no policy or legislation to address the employment and workplace discrimination suffered by lesbian, gay, bisexual, transgender and intersex people. Information on their situation is scant, and it was suggested that discriminatory practices are rarely reported because of entrenched intolerance.

Forced labour

60. Cases of forced labour and human trafficking were reported to the Working Group, especially in illegal logging and mining. Indigenous peoples and children are the most severely affected. The efforts made by the authorities to tackle these issues included the adoption of the National Plan of Action for the Eradication of Forced Labour 2013–2017, Act No.1323, under which penalties for forced labour were introduced, and the National Plan to Combat Trafficking in Persons 2017–2021.[43]

Labour inspection

61. The Working Group was informed of the establishment of the National Labour Inspection Authority and its nine regional offices, a positive step towards respect for labour regulations and human rights in the workplace.[44] The authorities highlighted the need for more resources, including extended representation in the field, to fully carry out their mandate.

B. Indigenous peoples

62. The indigenous population of Peru, which, according to official figures, is at least 7 million (approximately 40 per cent of the country's population), is one of the largest in the region.[45] The Working Group observed that, because they have particular ties to their ancestral lands and natural resources and because extractive projects often operate in areas used or surrounded by indigenous peoples, the indigenous peoples of Peru are disproportionately affected by the adverse impact of corporate activity. The Working Group notes that this vulnerability is exacerbated by the long history of discrimination against indigenous peoples.

Right to consultation and free, prior and informed consent

63. International standards stipulate that prior and informed consultation of communities affected by business operations is critical to obtaining the consent of those communities, preventing and mitigating adverse impacts and addressing grievances. The Working Group

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[42] Decision No. 005-2017-MTPE/2 of the Office of the Deputy Minister. Available from http://legis.pe/wp-content/uploads/2017/12/Publican-Guia-practica-para-la-prevencion-y-sancion-del-hostigamiento-sexual-en-el-trabajo-Legis.pe_.pdf.

[43] Decree No. 017-2017_IN.

[44] Three governmental entities have labour inspection duties in Peru: the Ministry of Labour and Promotion of Employment (Act No. 28806), the National Labour Inspection Authority, created in 2013 to centralize the labour inspection process and increase the Ministry's inspection and enforcement capacity (Act No. 29981), and the Regional Directorates of Labour and Promotion of Employment in each of Peru's 26 regions (Act No. 27867). Position of the Government of Peru with respect to the questions submitted by the Government of the United States of America on the submission presented by ILRF, Perú Equidad and seven Peruvian workers' organizations related to the labour chapter of the U.S.–Peru TPA (4 December 2015.)

[45] These data are taken from the 2012 census and are based solely on language criteria. Therefore, there is no centralized information on the number of campesino and indigenous communities. The 2017 census includes a category for indigenous people, but the results have not yet been released.

therefore welcomed the adoption of Act No. 29785, the Prior Consultation Act, which was informed by ILO Convention No. 169, and its subsequent regulation.[46]

64. The Working Group was pleased to learn that in March 2017, the Fourth Specialized Court on Constitutional Matters of Lima ordered the annulment of a contract for oil exploration and exploitation in block 116, located in El Cenepa, on the grounds that the right to prior consultation of the native communities concerned had been violated.[47] The ruling states that prior consultation was compulsory starting on the date of the entry into force (in 1995) of ILO Convention No. 169, not the date of the entry into force (in 2011) of the Prior Consultation Act. That ruling, if upheld, would set a precedent, as consultations would have to be organized for 13 other hydrocarbon contracts. Perupetro and the Ministry of Energy and Mining have filed an appeal against the court order, a decision on which is pending before the Lima High Court.

65. The Working Group was also informed that 46 prior consultation processes had been carried out and that 6 were currently ongoing. The processes are supported by the Ministry of Culture's Office of the Deputy Minister for Intercultural Affairs and the competent authorities. Civil society organizations noted that indicating exactly when prior consultations should be carried out was a good practice and encouraged similar specifications for the consultations on mining-related issues.[48]

66. The Working Group understood that the award of concessions for oil and gas or mining projects did not strictly require prior consultations with the communities potentially affected, since such concessions did not constitute "authorization for the holder to carry out exploration, exploitation or mineral extraction".[49] In this regard, the Working Group noted that consultations should be held before all decisions that might affect the rights of indigenous peoples and that the award of concessions for potential mining activities on indigenous land is certainly one such decision. Indigenous peoples should also be consulted before prospecting decisions, decisions on launching projects or shutting them down and strategic planning decisions, such as the definition of initiatives for attracting investment and the priority to be given to extractive operations in efforts to promote economic development. In the same vein, the Working Group was pleased to hear that the Supreme Court has stated that consultations should also take place on environmental impact assessments.[50]

67. The Working Group notes the importance of allocating adequate resources to ensuring the informed participation of indigenous peoples in such processes, including through the provision of legal and technical assistance, and of giving special attention to the inclusion of women, who may otherwise be excluded.

68. Some businesses enterprises and business associations informed the Working Group that, in practice, the consultation processes offered them a tool to make their investments more sustainable and improve relationships with local communities. In this regard, the Working Group emphasized that meaningful consultations should be a central aspect of human rights due diligence for business enterprises to identify concerns and grievances early on and ensure that all aspects of their operations are respectful of the rights of indigenous peoples, in accordance with international standards.[51] However, the Working Group noted with concern that the representatives of some businesses denied the presence of indigenous people as such in the areas where their businesses operated.

[46] Supreme Decree No. 001-2012-MC.
[47] Ruling No. 32365-2014 (Lima, 7 March 2017).
[48] Ministerial Decision No. 209-2015-MEM/DM.
[49] Ministerial Decision No. 003-2013-MEM/DM, annex 1.
[50] Ruling No. 32365-2014 of the Fourth Constitutional Court (Lima, 7 March 2017).
[51] A/HRC/27/52/Add.3, paras. 31–55; CCPR/C/PER/CO/5, para. 24.

Database of indigenous peoples

69. The Working Group was informed that some self-identified indigenous peoples were not recognized for purposes of the right to consultation on some large-scale projects in the database of indigenous peoples maintained by the Ministry of Culture's Office of the Deputy Minister for Intercultural Affairs, which argued that they were not indigenous since they were not registered in the database. However, the Ministry of Culture informed the Working Group that the database was merely a reference tool that was continuously updated and that even if an indigenous community was not included in it, the community's collective rights under ILO Convention No. 169 were not affected. The Working Group is of the view that providing indigenous people with more information about the database and involving them in its development, not least in respect of the inclusion of Andean indigenous peoples, could put an end to these diverging perceptions.

C. Human rights defenders and civic space

Human rights defenders

70. The Working Group was alarmed by the large number of human rights defenders and local leaders reportedly killed, attacked or threatened for defending the environment and land rights.[52] In addition, numerous people who had participated in social protests against the impact of business activities on human rights informed the Working Group that they had faced criminal charges and been subjected to various forms of intimidation and stigmatization.

71. There were reports that legislation had been adopted that has worsened the situation for human rights defenders in the country. Examples included a legislative decree on combating criminal organization, which extends the time limit on pretrial detention and stiffens the penalties for criminal organization.[53] Community leaders stated that they had faced criminal charges for extortion for allegedly disrupting the provision of public services or legally authorized work while taking part in protests to demand respect for human rights.

72. The Working Group reiterates the recommendations of the Human Rights Committee urging the Government to consider adopting legislation decriminalizing defamation, as the criminalization thereof poses a threat to the freedoms of opinion or expression, and to conduct effective investigations of reports concerning attacks against human rights defenders.[54]

73. The Working Group was encouraged to learn that the Ministry of Justice had elaborated a protocol to process complaints relating to attacks against human rights defenders. In addition, the new National Action Plan on Human Rights proposes the creation of a mechanism for the protection of human rights defenders by 2021 and a database to track threats to their safety by 2019. The Guiding Principles highlight the key role human rights defenders can play in human rights due diligence and in enabling companies to understand the concerns of stakeholders. In particular, the Guiding Principles underscore the need for businesses to consult human rights defenders as an expert resource and highlight their role as watchdogs, advocates and facilitators. States, according to the Guiding Principles, should ensure that the legitimate activities of human rights defenders are not obstructed.

74. The Working Group noted that establishing a clear line of work on human rights defenders in the Office of the Ombudsman would help make it possible to monitor the

[52] A total of 87 human rights defenders were reportedly murdered from 2011 to 2016. Annual report 2015/16 of the National Human Rights Coordinating Office, April 2017, p. 64. See http://derechoshumanos.pe/informe2015-16/Criminalizacion-de-la-protesta.pdf.

[53] Legislative Decree No. 30558 (9 May 2017) amending article 2 (24) (f) of the Constitution, Legislative Decree No. 1244 (29 October 2016), and Legislative Decree No. 1298 (23 December 2016).

[54] See CCPR/C/PER/CO/5, para. 22.

situation of human rights defenders systematically and push for additional measures to address the situation.

Use of State security forces in the context of social protest

75. It was pointed out that new laws and policies had further shrunk civic space, notably in terms of the use of force by police and deployment of the Armed Forces in public security operations. Legislative Decree No. 1095, for instance, authorizes the deployment of the Armed Forces for public security operations, including protests, and states of exception have repeatedly been declared in the context of social protests — 25 such states were declared in 2015 alone. Under the Decree, the police may use lethal force to deal with "hostile groups". As highlighted by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the definition of "hostile groups" in the law is so wide that it could encompass members of social protest movements who were not carrying any weapons.[55] Furthermore, the Decree states that the military courts will have jurisdiction over proceedings initiated in response to any illicit conduct by soldiers during protests.

76. The Working Group heard about many social protests that resulted in violent clashes with the police and the Armed Forces and a number of deaths, mainly of civilians, but also of police officers. The larger number of civilian deaths may suggest a disproportionate use of force. According to the National Human Rights Coordinating Office, only one of the civilian deaths during a protest since 2002 has led to a conviction.

77. The experts visited Cotabambas, where, against the backdrop of social unrest related to a mining project, 3 people were killed and 15 were arbitrarily arrested.[56] The Inter-American Commission on Human Rights states that controlling disturbances that may be produced internally by social protest demonstrations is up to the police, whose function is geared towards public security and not the security of the State.[57]

78. The Working Group was heartened to learn that Act No. 1186 had repealed provisions that had given police officers immunity for the injuries and deaths they caused in their official capacity and that the Government had brought regulations on the use of force by the Peruvian National Police into line with applicable human rights standards.[58]

Extraordinary police services provided to companies

79. Concerns were repeatedly voiced about the legal framework allowing companies to hire police officers to provide extraordinary police services.[59] The result, in practice, is that police officers who are off official duty, wearing police uniforms and carrying police weapons are paid to provide security services to private companies. The Working Group is of the view that this practice creates confusion over the constitutional role of the National Police, which is to protect the people, and gives rise to perceptions that they serve private interests.

80. The Working Group was informed that steps have been taken to limit the role of off-duty police officers who provide security services to private companies under agreements

[55] See A/HRC/16/51/Add.3.

[56] "Las Bambas: violaciones de derechos humanos y protesta social", National Human Rights Coordinating Office and Instituto de Defensa Legal, 2015.

[57] See www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf.

[58] Legislative Decree No. 1186, on the use of force by the personnel of the Peruvian National Police, was regulated by Supreme Decree No. 012-2016-IN of July 2016. As a result, on 22 March 2016 the Directorate General of the National Police issued a handbook on operations for maintenance and restoration of public order. Moreover, Ministerial Decision No. 487-2018-IN ordered the prepublication of the draft of human rights handbook for police officers.

[59] Legislative Decrees No. 1267 and No. 1268.

concluded by those companies and the Peruvian National Police.[60] However, it believes that such agreements should be avoided altogether.

VII. Access to remedy

A. State-based judicial mechanisms

Judicial mechanism

81. The Working Group noted the concerns from civil society groups and local communities that the formal judicial system generally appeared to be on the side of the more powerful. Another key concern was the transfer of judicial proceedings to jurisdictions far from the locations of the events that prompted the proceedings. This situation was reportedly exacerbated by a decision of the judicial authorities to assign jurisdiction over cases linked to social unrest during states of emergency to the National Criminal Court.[61]

82. The Working Group was encouraged to hear the national courts have increasingly incorporated international standards in cases where businesses are involved. The Constitutional Court recognized the right to consultation of indigenous people in line with relevant international instruments. In March 2017, a high court ordered the cancellation of a contract for oil exploration and exploitation in block 116, located in El Cenepa, because it was found that the right to prior consultation of the native communities had been violated and that consultations should also have preceded the environmental impact assessments.[62]

83. The Working Group encourages the State to include a new article in the Criminal Code with a view to ensuring that legal persons, including corporations, can be held responsible for their criminal acts, as recommended by the Committee on the Rights of the Child.[63]

B. Non-judicial grievance mechanisms

Office of the Ombudsman

84. The Office of the Ombudsman was established as an independent national human rights institution in the 1993 Constitution. It has 38 offices around the country and can receive complaints about cases of human rights violations. It produces reports and makes recommendations but has no power to impose sanctions. A number of the areas in which the Office is active, including efforts to combat corruption, the monitoring of social conflict and reporting on deforestation, are of direct relevance to business and human rights. The Office's ability to receive complaints regarding business operations is a welcome one. However, the Working Group is of the view that the knowledge of business and human rights of the staff members located throughout the country should be strengthened to allow the Office to play a greater role in promoting access to effective remedies for victims of corporate-related human rights abuses and be involved in the development of and follow-up to the National Action Plan.

National Contact Point

85. As a signatory to the OECD Guidelines on Multinational Enterprises, Peru has established a National Contact Point. The Contact Point has focused mainly on raising awareness of the Guidelines, which contain a chapter on human rights aligned with the

[60] Legislative Decree No. 1267 and Supreme Decree No. 003-2017-IN of 21 February 2017, under which guidelines for the provision of police services were adopted.

[61] Administrative Decision No. 136-2012-CE-PJ.

[62] Ruling No. 32365-2014 of the Fourth Constitutional Court (Lima, 7 March 2017).

[63] CRC/C/OPSC/PER/CO/1, para. 28.

Guiding Principles. The Contact Point is in ProInversión, a government agency that is part of the Ministry of the Economy and Finance and works mainly to promote private investment. The Working Group noted with concern that there seemed to be hardly any awareness of the Contact Point mechanisms among people at risk of business-related human rights abuses. The Contact Point should also enjoy greater independence and be authorized to handle and resolve complaints in a genuinely impartial manner. Moreover, a multi-stakeholder support component should be established to enhance the Contact Point's visibility and legitimacy.

Operational-level grievance mechanisms

86. During its visits to the mining sites of Yanacocha in Cajamarca and Las Bambas in Apurimac, the Working Group learned about the companies' efforts to establish operational-level grievance mechanisms. The companies explained that the design of these mechanisms had been informed by the effectiveness criteria set out in the Guiding Principles (principle 31).

VIII. Conclusions and recommendations

General comments

87. **The Working Group welcomes the measures taken by the Government of Peru to implement the Guiding Principles, including the commitment to develop a national action plan on business and human rights and the institutional and policy measures adopted to address social conflicts, a majority of which arise in the context of business operations. The Working Group stands ready to continue the dialogue on how to develop and implement such measures in order to ensure that they align with international good practice.**

88. **A key finding of the visit was the need to further strengthen mechanisms for multi-stakeholder engagement when business-related decisions are made. The meaningful participation of all stakeholders includes providing them with access to clear information on adverse business-related impacts on human rights and on other measures that, taken in the pursuit of economic growth, might affect them, such as special agreements between companies and the Government.**

89. **The Working Group makes the following recommendations to the Government, business enterprises and civil society organizations.**

90. **The Working Group recommends that the Government:**

(a) **Build capacity and raise awareness among public authorities, including judicial authorities and lawmakers, of the Guiding Principles on Business and Human Rights;**

(b) **Amend legislation and regulations to close current gaps in human rights protection, in particular concerning indigenous peoples' rights to land and natural resources, the rights to a healthy environment and to health and the right to freedom of expression and assembly, and reinforce mechanisms to monitor compliance with existing legislation and relevant human rights instruments, including ILO conventions;**[64]

(c) **Take an inclusive approach, involving all relevant ministries and a multi-stakeholder engagement process, including human rights defenders, indigenous peoples, civil society organizations, trade unions, business organizations, companies, legal and bar associations and the Office of the Ombudsman, to developing a national action plan on business and human rights. Attention should be given to protection**

[64] See also CERD/C/PER/CO/18-21, para. 17, CEDAW/C/PER/CO/7-8, para. 32, CMW/C/PER/CO/1, paras. 16–17, and A/HRC/29/40/Add.2, para. 86 (g).

from discrimination-related human rights abuses, such as discrimination against women, lesbian, gay, bisexual, transgender and intersex persons and persons with disabilities, and to strengthening access to remedies, judicial or not, for victims of business-related human rights abuses;

(d) Take measures to ensure that prior and informed consultations are held with indigenous peoples and other communities affected by development projects and business operations and that they are held at all stages of decision-making that might affect those communities, in accordance with international standards concerning the rights of indigenous peoples, including with regard to their free, prior and informed consent. Such measures should include further guidance and support for consultation processes, setting deadlines for consultations and the stages thereof, taking additional steps to ensure informed participation, such as providing legal and technical assistance and full access to information, and imposing effective sanctions for non-compliance;

(e) Create a dedicated body/institution responsible for the implementation of consultations with indigenous peoples, independent of the ministry in charge of granting concessions or in control of the State-owned companies involved;

(f) Take measures to secure the inclusive and balanced participation of all interested parties, giving special attention to supporting the inclusion of vulnerable groups that may otherwise be left out, and to ensure that communities are adequately informed of the expected positive and negative outcomes of development projects;

(g) Scale up the work of the Office of the Deputy Ministry of Territorial Governance to facilitate dialogue and strengthen participatory mechanisms, while building on the lessons learned from the two similar bodies that preceded it,[65] while also scaling up the work of the Ministry of Agriculture and regional authorities to continue the process of formalizing individual and collective land rights;

(h) Require State-owned enterprises to embed respect for human rights in their policies and procedures and exercise human rights due diligence, in line with the Guiding Principles;

(i) Provide guidance to State-owned and private companies on human rights due diligence, including on how they should make their efforts to identify human rights risks public and what steps they should take to prevent and address them. In sectors where risks to human rights are especially significant (mining, oil and gas, agribusiness), the Government should consider introducing mandatory reporting and human rights due diligence;

(j) Strengthen measures to assess the environmental and social sustainability of agribusiness projects, including through countrywide studies of the soil and its capacity in different regions and an assessment of the recent development of large-scale plantations. Such studies and assessments should inform the National Plan of Sustainable Oil Palm Development, to which a multi-stakeholder engagement approach should be taken;

(k) Integrate human rights aspects into systems and procedures for environmental impact assessments;

(l) Scale up efforts to curb labour informality;

(m) Take measures to address obstacles to freedom of association and collective bargaining, in line with ILO recommendations, including investigating and punishing attacks against and murders of trade unionists, engaging in dialogue on the subject of protection from anti-union discrimination against workers with the

[65] The Ministry of the Environment's Advisory Office on Social and Environmental Affairs, established in 2011, and the National Office for Dialogue and Sustainability of the Office of the President of the Council of Ministers, established in 2012.

workers' and employers' organizations concerned and reviewing labour regulation that allows consecutive short-term contracts;

(n) Scale up efforts to address child labour and forced labour, including improved data collection and improved use of existing tools and policies, such as the National Plan of Action for the Eradication of Forced Labour;

(o) Strengthen the institutional capacity of the Labour Inspection Authority to exercise oversight of companies' practices, including by ensuring that it has the personnel and resources for labour inspections in all regions, a mandate to carry out inspections without prior notification and effective powers of sanction;

(p) Raise the legal minimum age for admission to employment to the age of the end of compulsory education (15 years);

(q) Promote education and learning opportunities for persons with disabilities and take measures to facilitate their access to the labour market;

(r) Adopt a new national gender-equality plan based on an assessment of current gaps and challenges and the status of the National Plan 2012–2017, as recommended by the Committee on the Elimination of Discrimination against Women;[66]

(s) Assess and address the discrimination faced by lesbian, gay, bisexual, transgender and intersex people in accessing the labour market and in the workplace;

(t) Update the database of indigenous peoples regularly and involve indigenous peoples themselves in the process, while taking into account the criterion of self-identification;

(u) Strengthen the protection of human rights defenders, including by adopting legislation to counter strategic lawsuits against public participation to ensure that defamation laws do not prevent human rights defenders from raising concerns about adverse business-related human rights impacts and by developing mechanisms to address attacks against human rights defenders and physically protect such defenders from attacks and intimidation. The Government is also encouraged, together with other States, to engage with the ongoing efforts of the Working Group to develop guidance on the role of business with regard to human rights defenders;[67]

(v) Take measures to address instances of excessive use of force by law enforcement officials and members of the security forces, including by strictly limiting the use of the military for civilian law-and-order tasks, and promptly, impartially and effectively investigate allegations of excessive use of force, as recommended by the Human Rights Committee;[68]

(w) Publicly disclose existing agreements between private companies and the Government to provide security services and take steps to discontinue the practice of making such agreements;

(x) Remove barriers to effective judicial remedies, in line with policy recommendations made by the Office of the United Nations High Commissioner for Human Rights and the Working Group,[69] **and provide assistance to vulnerable groups to ensure that they can access judicial mechanisms in an accessible, affordable, adequate, timely and non-discriminatory manner;**

(y) Increase the effectiveness of State-based non-judicial grievance mechanisms, including by enhancing the capacity of the Office of the Ombudsman to

[66] CEDAW/C/PER/CO/7-8.
[67] See www.ohchr.org/EN/Issues/Business/Pages/HRDefendersCivicSpace.aspx.
[68] CCPR/C/PER/CO/5.
[69] A/HRC/32/19; A/72/162.

handle business-related human rights complaints, raising awareness of the National Contact Point mechanism and strengthening its independence and capacity.

91. **The Working Group recommends that all business enterprises, including private enterprises and State-owned enterprises:**

(a) **Take steps to fulfil their responsibility to respect human rights, including by: adopting a human rights policy; carrying out human rights due diligence to identify, prevent, mitigate and account for how they address human rights risks and the adverse effects of their activities; and providing for/collaborating in providing access to remedy when they have caused or contributed to human rights abuses;**

(b) **In assessing the actual or potential adverse impact on human rights, ensure meaningful consultation with potentially affected individuals and communities, paying attention to potentially vulnerable or marginalized groups and ensuring that they have timely and complete information about proposed projects or changes that may affect them and their capacity to voice their opinions;**

(c) **Ensure that affected communities have free and transparent access to information, in particular concerning the expected negative impact of projects, the sharing of benefits and the availability of grievance mechanisms;**

(d) **Establish/strengthen grievance mechanisms at the operational level in accordance with principle 31 of the Guiding Principles;**

(e) **Pay specific attention to how the impact of business operations on the human rights of some groups, such as indigenous peoples, who tend to have a special relation to their ancestral lands and natural resources, and women, may differ from their impact on those of other groups;**

(f) **Refrain from taking measures to target people who exercise their legitimate right to speak up against the potential or actual adverse impact of business operations and instead recognize the importance of engaging constructively with human rights defenders and the stakeholders they represent.**

92. **The Working Group recommends that civil society organizations:**

(a) **Continue to raise awareness of the respective obligations and responsibilities of the Government and business enterprises under international human rights law;**

(b) **Continue to champion the rights of affected communities and human rights defenders;**

(c) **Engage in the process of developing a national action plan on business and human rights through multi-stakeholder dialogue that includes the voices of affected communities;**

(d) **Follow up on the Working Group's recommendations and share with it information on relevant developments.**